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SJC-13179

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES vs. LINDA MARIE MONDOR & others<sup>1</sup> (and a consolidated case<sup>2</sup>).

January 27, 2023.

Medicaid. MassHealth. Annuity. Federal Preemption. Statute,  
Construction, Federal preemption.

The parties to these consolidated cases seek a judgment declaring their respective rights to the remainder proceeds of two annuity contracts, each of which names the Commonwealth as primary remainder beneficiary and the individual defendants as contingent remainder beneficiaries. In each case, the plaintiff, the Executive Office of Health and Human Services (Commonwealth), only claims entitlement to remainder proceeds up to the amount of medical assistance paid on behalf of an "institutionalized spouse"<sup>3</sup> whose eligibility for Medicaid long-term care benefits was achieved by the purchase of the annuity during the relevant "look-back" period as defined by Federal statute. See 42 U.S.C. § 1396p(c). For the reasons discussed infra, we remand the consolidated cases for entry of a declaratory judgment in favor of the Commonwealth.

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<sup>1</sup> Michelle Mogan and Cathy Ann Mondor.

<sup>2</sup> Executive Office of Health and Human Services vs. Kathleen Ann Bristow & others.

<sup>3</sup> The term "institutionalized spouse" means "an individual who . . . is in a medical institution or nursing facility . . . [and] is married to a spouse who is not in a medical institution or nursing facility." 42 U.S.C. § 1396r-5(h)(1). The term "community spouse" means "the spouse of an institutionalized spouse." 42 U.S.C. § 1396r-5(h)(2).

Background. 1. Facts. We recite the facts as set forth in the parties' statement of agreed material facts pursuant to Mass. R. Civ. P. 64, as amended, 423 Mass. 1410 (1996).

a. Mondor annuity. Defendants Linda Marie Mondor, Michelle Mogan, and Cathy Ann Mondor (collectively, Mondor beneficiaries) are the daughters of Elda Mondor and Edward J. Mondor.<sup>4</sup> Edward was Elda's spouse. Elda was admitted to a skilled nursing facility for long-term care in March 2018, at the age of eighty-four.

In April 2018, Edward purchased an annuity contract (Mondor annuity) issued by Standard Insurance Company (Standard). Edward paid a premium of \$191,215.28 for the Mondor annuity using funds held in a traditional individual retirement account (IRA) for Edward. The Mondor annuity named Edward as the sole annuitant and owner. The Mondor annuity provided that Edward, as annuitant, would receive monthly payments in the amount of \$4,065, commencing June 3, 2018, and continuing for a four-year term. Edward named the "Commonwealth of Massachusetts" as the primary remainder beneficiary of the Mondor annuity, and he named the Mondor beneficiaries as the contingent remainder beneficiaries. The Mondor annuity is nontransferable, nonforfeitable, nonassignable, noncommutable, and irrevocable.

In June 2018, Elda submitted an application for MassHealth<sup>5</sup> long-term care benefits. But for Edward's purchase of the Mondor annuity, Edward and Elda's joint assets would have exceeded the allowable limit for Elda to be deemed eligible for MassHealth long-term care benefits. Elda's application for MassHealth benefits disclosed the Mondor annuity, as required by

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<sup>4</sup> For convenience, we hereinafter refer to Elda and Edward Mondor by their first names.

<sup>5</sup> MassHealth refers to the State program by which the Commonwealth participates in Medicaid, "a cooperative Federal and State program that provides medical assistance to low income persons based on financial need" (quotation and citation omitted). Fournier v. Secretary of the Executive Office of Health & Human Servs., 488 Mass. 43, 45 (2021). The plaintiff, the Executive Office of Health and Human Services (Commonwealth), is the State agency responsible for administering MassHealth. See Daley v. Secretary of the Executive Office of Health & Human Servs., 477 Mass. 188, 190 (2017).

42 U.S.C. § 1396p(e), and Elda also provided MassHealth with a completed Notice of Preferred Remainder Beneficiary, known as an "ANN-3" form. The completed ANN-3 form, signed by Edward as Elda's authorized representative, identified the Mondor annuity and stated in relevant part:

"The [Commonwealth] has determined that, pursuant to MassHealth regulations at 130 [Code Mass. Regs. §] 520.007(J) and [F]ederal law at 42 U.S.C. [§] 1396p(e), the Commonwealth of Massachusetts must be named as a preferred remainder beneficiary in the first position (primary beneficiary) if there is no community spouse or minor or disabled child . . . . The Commonwealth may collect up to the total amount of medical assistance paid on behalf of the individual if there is no community spouse or minor or disabled child. In accordance with [F]ederal law 42 U.S.C. [§] 1396p(e), the Commonwealth must notify the annuity issuing company of its interest as a preferred remainder beneficiary under the annuity and will do so by way of sending the company a copy of this form."

The Commonwealth provided Standard with a copy of the completed ANN-3 form regarding the Mondor annuity.

Before approving Elda's MassHealth application, MassHealth requested additional documentation, including a current statement from the Mondor annuity "with Commonwealth of Mass[.] as beneficiary." After the additional documentation was provided, MassHealth approved Elda's application, deeming her eligible for long-term care benefits retroactive to May 1, 2018. At the time of the filing of the complaint, Elda continued to reside in a skilled nursing facility and receive MassHealth benefits for her long-term care.

Edward died on April 11, 2020. At the time of his death, \$97,720.28 in annuity payments remained to be paid on the Mondor annuity. The Commonwealth made a claim on the proceeds of the Mondor annuity up to the total amount of medical assistance paid on behalf of Elda. The Commonwealth asserted that as of July 29, 2020, it had paid \$146,903.57 in medical assistance on Elda's behalf. The Mondor beneficiaries also made a claim to all remaining proceeds of the Mondor annuity.

As of March 31, 2021, MassHealth had paid \$191,865.61 in medical assistance on behalf of Elda. Edward never applied for or received Medicaid or MassHealth benefits during his lifetime.

Standard remains in possession of all the remainder proceeds from the Mondor annuity.

b. Castle annuity. Defendants Kathleen Anne Bristow, Marianne Schwenzfeier, and John Francis Castle (collectively, Castle beneficiaries) are the children of Carol A. Castle and James W. Castle.<sup>6</sup> James was Carol's spouse. Carol was admitted to a skilled nursing facility for long-term care in August 2018, at the age of seventy-eight.

In November 2018, James purchased an annuity contract (Castle annuity) issued by Standard. James paid a premium of \$176,859.75 for the Castle annuity, using funds held in a traditional IRA for James. The Castle annuity named James as the sole annuitant and owner. The Castle annuity provided that James, as annuitant, would receive monthly payments in the amount of \$3,031.93, beginning on November 19, 2018, and continuing for a five-year term. James named the "Commonwealth of Massachusetts" as the primary remainder beneficiary of the Castle annuity, and he named the Castle beneficiaries as the contingent remainder beneficiaries. The Castle annuity is nontransferable, nonforfeitable, nonassignable, noncommutable, and irrevocable.

In December 2018, Carol submitted an application for MassHealth long-term care benefits. But for James's purchase of the Castle annuity, James and Carol's joint assets would have exceeded the allowable limit for Carol to be deemed eligible for MassHealth long-term care benefits. Carol's application for MassHealth benefits disclosed the Castle annuity, per 42 U.S.C. § 1396p(e), and Carol also provided MassHealth with a completed ANN-3 form, signed by James as Carol's authorized representative, which identified the Castle annuity and contained language identical to that quoted supra from the ANN-3 form in connection with the Mondor annuity. The Commonwealth later provided a copy of the ANN-3 form to Standard.

MassHealth approved Carol's application, deeming her eligible for long-term care benefits retroactive to November 12, 2018. Carol died on April 23, 2020. As of that date, MassHealth had paid \$123,413.51 in medical assistance on Carol's behalf.

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<sup>6</sup> For convenience, we hereinafter refer to Carol and James Castle by their first names.

James died on October 1, 2020. At the time of his death, approximately \$110,000 in annuity proceeds remained to be paid on the Castle annuity. James never applied for or received Medicaid or MassHealth benefits during his lifetime.

The Commonwealth made a claim on the proceeds of the Castle annuity up to the total amount of medical assistance paid on behalf of Carol, which was identified as \$123,413.51. In or around February 2021, the Castle beneficiaries also made a claim to the remaining proceeds of the Castle annuity.

Standard initially made payments to the Commonwealth in response to its claim as primary remainder beneficiary, but then ceased making payments in response to the competing claims of the Castle beneficiaries. As of February 19, 2021, Standard had made payments to the Commonwealth for a total of \$15,159.65. Standard remains in possession of the balance of the Castle annuity proceeds.

2. Prior proceedings. The cases before us were commenced by Standard, at least in part as interpleader actions, to resolve the competing claims to the proceeds of the Mondor and Castle annuities. In each case, the parties filed cross motions for declaratory judgment, and then stipulated to Standard's dismissal from the case. The cases were consolidated in the Superior Court, and the parties jointly moved to report the cases to the Appeals Court without decision on a statement of agreed material facts pursuant to Mass. R. Civ. P. 64. A judge in the Superior Court allowed the motion, and after the cases were entered in the Appeals Court, this court granted the parties' joint motion for direct appellate review.

3. Discussion. The consolidated cases are governed in all material respects by our decision today in Dermody v. Executive Office of Health & Human Servs., 491 Mass. (2023). In Dermody, we concluded that under the Federal Medicaid Act, 42 U.S.C. §§ 1396 et seq., in order to avoid a determination of ineligibility or the imposition of a disqualifying transfer penalty under 42 U.S.C. § 1396p(c) with respect to annuity transactions occurring after February 8, 2006, any annuity purchased by a community spouse for Medicaid planning purposes in order to achieve the Medicaid eligibility of an institutionalized spouse and designated for the "sole benefit" of the community spouse under § 1396p(c)(2) must also satisfy the beneficiary naming requirement of § 1396p(c)(1)(F)(i). We also concluded in Dermody that to the extent that the State Medicaid estate recovery statute, G. L. c. 118E, § 31 (b) (1),

would prevent the Commonwealth from collecting annuity proceeds it is designated to receive as the primary remainder beneficiary, the State statute is preempted by the Medicaid Act.

On the facts presented here, in order for the Medicaid applications of the institutionalized spouses, Elda and Carol, to be approved without the imposition of a transfer penalty, the Mondor and Castle annuities were required to, and did, name the Commonwealth as primary remainder beneficiary pursuant to § 1396p(c)(1)(F)(i). Further, on the deaths of the annuitants, the Commonwealth became entitled to remainder proceeds from the annuities to the extent of benefits paid by the Commonwealth on behalf of the "institutionalized individual[s]" pursuant to § 1396p(c)(1)(F)(i). In accordance with our opinion in Dermody, the relevant "institutionalized individual[s]" for purposes of § 1396p(c)(1)(F)(i) are the individuals whose eligibility for Medicaid long-term benefits was made possible by the purchase of the annuities and whose eligibility for Medicaid long-term care benefits turned on the proper disclosure and treatment of the annuities in accordance with the Medicaid Act, see 42 U.S.C. § 1396p(c)(1)(F)(i), (e). Here, the relevant "institutionalized individual[s]" of the Mondor and Castle annuities are Elda and Carol, respectively.

The consolidated cases are remanded to the Superior Court for entry of a declaratory judgment in favor of the Commonwealth and for any further proceedings necessary to permit Standard to disburse the remainder proceeds from the Mondor and Castle annuities in a manner consistent with this opinion.<sup>7</sup>

So ordered.

Jesse M. Boodoo, Assistant Attorney General, for Executive Office of Health and Human Services.

Brian E. Barreira for Lisa Marie Mondor & others.

Patricia Keane Martin, Clarence D. Richardson, Jr., & C. Alex Hahn, for Massachusetts Chapter of the National Academy of Elder Law Attorneys, amicus curiae, submitted a brief.

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<sup>7</sup> To the extent that the Mondor and Castle beneficiaries raise issues not explicitly addressed in this opinion, we have not overlooked them. Rather, we find them without merit and decline to discuss them.